

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Raphael Mendez,

Plaintiff,

v.

**ORDER**

Civil No. 16-845 ADM/BRT

FMC Minnesota et al., Lt. Holbus (SHU),  
Officer Kepp, Eberle Reporting Employee,  
A. Culberbon Report Delivering Person, and  
Any Other UNKNOWN Individual Such as the Property  
R and D Operation,

Defendants.

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Raphael Mendez, pro se.

Erin M. Secord, Assistant United States Attorney, United States Attorney's Office, Minneapolis,  
MN, on behalf of Defendants.

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On March 31, 2016, pro se Plaintiff Raphael Mendez ("Mendez") initiated this 42 U.S.C. § 1983 Complaint [Docket No. 1], arguing that he was improperly disciplined for failing to provide a urine sample while detained at FMC Rochester. Mendez contends that he was "tortured" when Defendants placed him in the Segregated Housing Unit ("SHU") for six days. Compl. 1, 3–6.

On March 10, 2017, Magistrate Judge Becky R. Thorson recommended treating Defendants' Motion to Dismiss or for Summary Judgment [Docket No. 8] as one for summary judgment and granting the motion. See R & R [Docket No. 24] ("R&R"). In the R&R, Judge Thorson concluded that (1) Mendez's claims against the individual defendants must be construed as official capacity claims, and (2) the United States is the real party in interest to the claims against Defendants "FMC Minnesota" and "the Property R and D Operation." R&R at 10.

Thus, all of Mendez's claims are barred by sovereign immunity. Judge Thorson additionally concluded that even if the claims were not barred by sovereign immunity, they nevertheless lack merit.

On March 17, 2017, Mendez filed an Objection [Docket No. 25] to the R&R. In his Objection, Mendez questions the authenticity of the R&R, disputes the relevance of the factual background recited in the R&R, recharacterizes the claims he is asserting, contests the application of sovereign immunity, and argues that the R&R omitted facts crucial to his claims.

Upon conducting a de novo review of the record, the R&R, and the Objection, the Court agrees with Judge Thorson that all of Mendez's claims are barred by sovereign immunity. The Court further agrees with Judge Thorson that even if sovereign immunity did not apply, each of Mendez's claims is meritless.

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Mendez's Objections [Docket No. 25] to Magistrate Judge Becky R. Thorson's Report and Recommendation [Docket No. 24] are **OVERRULED**;
2. The Report and Recommendation is **ADOPTED** in full; and
3. Defendants' Motion to Dismiss or for Summary Judgment [Docket No. 8] is **GRANTED**.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

BY THE COURT:

s/Ann D. Montgomery  
ANN D. MONTGOMERY  
U.S. DISTRICT JUDGE

Dated: May 26, 2017.